

Internal Revenue Service

Number: **200733007**

Release Date: 8/17/2007

Index Number: 2055.12-06, 2055.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-131101-06

Date: APRIL 26, 2007

Re:

Legend:

Decedent	=
Estate	=
Trust	=
Trust 2	=
Trustees	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
\$Y	=
Z	=
Company	=
B	=

Dear :

This is in response to your request for a ruling that the charitable interest established under Decedent's revocable trust on Decedent's death constitutes a guaranteed annuity interest that is deductible under §2055(a) of the Internal Revenue Code.

The facts submitted and representations made are as follows: Decedent died on Date 1, survived by issue. B has been appointed executor of Decedent's estate. Prior to his death, on Date 2, Decedent executed Trust, a revocable inter vivos trust. Decedent subsequently amended Trust on Date 3 and Date 4. On Date 5, Decedent transferred Z shares of stock in Company, a publicly traded corporation, to Trust. Under the terms of Trust, during Decedent's life, trust income and corpus was to be paid to Decedent as he directed and Decedent retained the right to amend or revoke the trust. Under Article II(A), on Decedent's death, the entire trust corpus was to be held in further trust as Trust 2, and administered as provided in Article II.

Trust 2 is intended to qualify as a charitable guaranteed annuity trust that meets the requirements of § 2055(e)(2)(B). Under Article II(A)(1), the Trustees are directed to distribute annually, in equal shares to 12 designated charitable organizations, an amount equal to 7% of the net fair market value of the trust assets on the date of Decedent's death. If, when distributions are due, a selected beneficiary is no longer a charitable organization described in §§ 170(c)(2), 2055(a) and 2522(a), then the Trustees are to distribute that recipient's share to such other of the designated charitable organizations as the trustee shall select. Under Article IIB, the annuity amount is to be paid first from net income and to the extent net income is insufficient, from principal.

The obligation to pay the annuity under Article II (A)(1) commences with the date of the death of the Decedent, but payment may be deferred to the end of the taxable year in which the trust is completely funded. Within a reasonable period from that date, the trustee shall pay to, in the case of an underpayment, or shall receive from the charitable recipient, in the case of an overpayment, the difference between any amounts actually paid to the charities and the amounts payable, plus interest compounded annually.

If the net fair market value of the trust assets is incorrectly determined, the trustee will pay to the charitable recipients in the case of an undervaluation, or receive back from the recipients in the case of an overvaluation, an amount equal to the difference between the amount properly payable and the amount actually paid, including interest.

Under Article VIII, the Trustees will distribute property of the trust at such time and in such manner as not to subject the trust to tax under § 4942. In addition, the Trustees are prohibited from: engaging in any act of self-dealing as defined in § 4941(d) of the Code; retaining any excess business holdings as defined in § 4943(c); making any investments which would subject the trust to tax under § 4944; making any taxable expenditures as defined in § 4945(d).

Under Article III(A), Trust 2 is to terminate 18 years after the date of Decedent's death. On termination, the remaining trust corpus is to be distributed equally to Decedent's then living children, and to the surviving issue of any deceased child, per stirpes.

As of Date 1, Decedent's date of death, the total value of the assets passing to Trust 2 was \$Y.

LAW AND ANALYSIS

Section 2055(a) provides that for purposes of the federal estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

Under § 2055(e)(2), the estate tax charitable deduction is not allowable where an interest in property (other than an interest described in § 170(f)(3)(B)), passes or has passed from the decedent to a person, or for a use, described in § 2055(a), and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to a person, or for a use, not described in § 2055(a), unless --

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in § 664) or a pooled income fund (described in § 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

Under § 20.2055-2(e)(1)(i), in the case of decedents dying after December 31, 1969, where an interest in property passes from the decedent for charitable purposes and an interest in the same property passes from the decedent for private purposes, no deduction is allowed under § 2055(a) for the value of the interest passing for charitable purposes unless the interest is a "deductible interest".

Under § 20.2055-2(e)(2)(vi)(a), the term "deductible interest" includes a guaranteed annuity interest. A "guaranteed annuity interest" is a right to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term or for the life or lives of an individual or individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such date. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date.

Under § 20.2055-2(e)(2)(vi)(b), a charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect. Under § 20.2055-2(e)(2)(vi)(d), where a guaranteed annuity interest is in trust, the instrument may provide that income of the trust in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction is limited to the fair market value of the guaranteed annuity interest.

Section 20.2055-2(f)(1) provides that the amount of the deduction in the case of a contribution of a partial interest in property is the fair market value of the partial interest at the appropriate valuation date, as defined in § 20.2055-2(e)(2)(vi)(h). The fair market value of an annuity, life estate, term for years, remainder, reversion, or unitrust interest is its present value. Section 20.2055-2(f)(2)(iv) provides that the present value of a guaranteed annuity interest described in § 20.2055-2(e)(2)(vi) is to be determined under §20.2031-7. A deduction will be allowed under § 2055 only for the minimum amount it is evident the charity will receive. Thus, if the date of death value of the guaranteed annuity interest exceeds the date of death value of the trust assets, the allowable deduction is limited to the date of death value of the trust assets. § 20.2055-2(f)(2)(iv), Example 1.

Based on the information submitted and the representations made, we conclude that Trust 2 satisfies the requirements of a guaranteed annuity interest under §2055(e)(2)(B) and § 20.2055-2(e)(2)(vi). Accordingly, Decedent's estate will be entitled to a federal estate tax deduction under § 2055(a) for the present value of the guaranteed annuity interest, determined in accordance with § 20.2055-2(f)(2)(iv).

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

George L. Masnik
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

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